

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, §
v. § Cause No.: EP-11-CR-2728-KC
§
ANGEL OCASIO, §
§
Defendant. §

GOVERNMENT'S NOTICE OF EXPERT AND MEMORANDUM OF LAW

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

COMES NOW the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorneys, and files this Notice of Expert and would show unto the Court the following:

Defendant Angel Ocasio is charged in a four-count Indictment charging various violations relating to the receipt, distribution and possession of child abuse images. Trial currently is scheduled for jury selection on June 21, 2013.

Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(E), the Government hereby gives notice to the Defendant the following persons may be called as an expert at trial in this case:

- 1) Sergeant Matthew Pilon, New Mexico State Police, Online Predator Unit.

Sergeant Pilon will provide the jury with an overview of the how peer-to-peer software operates and facilitates the nearly anonymous trading of digital files, including those that contain images of children

engaged in sexually explicit activity, via the Internet.

Sergeant Pilon previously has testified as an expert witness in federal district court. A copy of his Curriculum Vitae is attached hereto as Exhibit A.

2) Demetrio Medina, Computer Forensics Agent, Department of Homeland Security, Homeland Security Investigations, CyberCrimes Group.

Agent Medina will testify as to the child sexual abuse images found on digital media belonging to defendant and the manner in which such was discovered. A full copy of the agent's report has been supplied to counsel in discovery.

Agent Medina previously has testified as an expert witness in federal district court. A copy of his Curriculum Vitae is attached hereto as Exhibit B.

3) Mark R. Martinez, Computer Forensics Agent, Department of Homeland Security, Homeland Security Investigations, CyberCrimes Group.

If called, Agent Martinez will testify as to the child sexual abuse images found on digital media belonging to defendant and the manner in which such was discovered. A full copy of the forensic report has been supplied to counsel in discovery.

Agent Martinez previously has testified as an expert witness in federal district court. A copy of his Curriculum Vitae is attached hereto as Exhibit C.

4) Joseph Byers, Computer Forensics Agent, Department of Homeland Security, Homeland Security Investigations, CyberCrimes Group.

If called, Agent Byers will testify as to the child sexual abuse images found on digital media belonging to defendant and the manner in which such was discovered. A full copy of the forensic report has been supplied to counsel in discovery.

Agent Byers previously has testified as an expert witness in federal district court. A copy of his Curriculum Vitae is attached hereto as Exhibit D.

The witnesses will be testifying primarily as to factual matters and may be asked to render an opinion; additionally, these witnesses will be testifying from specialized knowledge and training, this Notice is being filed.

The admissibility of expert opinion testimony generally turns on the following preliminary question of law determinations by the trial judge under Federal Rules of Evidence, Rule 104(a):

- Whether the opinion is based on scientific, technical, or other specialized knowledge, Fed. R. Evid 702;
- Whether the expert's opinion would assist the trier of fact in understanding the evidence or determining a fact in issue, Fed. R. Evid 702;
- Whether the expert has appropriate qualifications, that is, some special knowledge, skill, experience, training, or education on that subject matter, Fed. R. Evid 702; *Jones v. Lincoln Elec. Co.*, 188 F.3d 709 (7th Cir. 1999); *See Wilson v. Woods*, 163 F.2d 935, 936 (5th Cir. 1999)(expert in fire reconstruction unqualified as expert in auto accident reconstruction).
- Whether the testimony is relevant and reliable. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993); *Kumbo Tire Company, Ltd. v. Carmichael*, 526 U.S. 137, 152-53 (1999).
- Whether the methodology or technique the expert uses "fits" the conclusions (the expert's credibility is for the jury). See *General Electric Co. v. Joiner*, 522 U.S. 136, 145 (1997);
- Whether its probative value is substantially outweighed by the risk of unfair prejudice, confusion of issues, or undue consumption of time. Fed. R. Evid. 403.

The Fifth Circuit reviews a district court's determination of admissibility of expert testimony under an abuse of discretion. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

WHEREFORE, premises considered, the United States requests, should it elect to call the above-referenced individual, that he be designated as an expert witness, if necessary, in the instant case.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2012, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participant:

Michael Gorman, Esq. Attorney for Defendant
Shane McMahon, Esq.
Federal Public Defenders Office
700 E. San Antonio, 4th Floor
El Paso, Texas 79901

/s/
J. BRANDY GARDES